

The Wilderness Society

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Re:

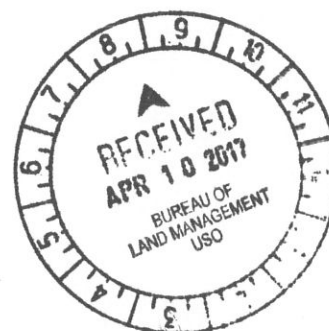
From: Barbara Young

Date: 04/10/2017

Please see attached.

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*The Wilderness Society * National Audubon Society * Southern Utah
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April 10, 2017

Via Fax (801-539-4237)

Bureau of Land Management
Utah State Office
ATTN: Sheri Wysong
440 West 200 South, Suite 500
Salt Lake City, UT 84101

Re: DOI-BLM-UT-C020-2017-001-EA, June 2017 Oil and Gas Lease Sale

Dear Ms. Wysong:



We hereby protest parcels 007, 008, 017, 019, 020, 021, 022, 023, 024, and 025 (hereinafter referred to as the "PHMA Parcels") included in the June 2017 Notice of Competitive Lease Sale. Each of these parcels fall within in Priority Habitat Management Areas (PHMA). In deciding to offer these parcels for sale, BLM failed to comply with the prioritization requirements provided in the Greater Sage Grouse EIS ROD, the Utah Approved RMP Amendment and Instruction Memorandum 2016-143.

The final EA for this sale acknowledges there are 11 parcels in PHMA. EA, p. 3. The "Conformance with BLM Land Use Plan" section of the EA provides that the "alternatives described below are in conformance with the RFO RMP, (BLM 2008), as maintained and as amended by the 2015 Greater Sage Grouse EIS ROD (BLM 2015)." EA, p. 4. The EA also incorporates applicable stipulations requiring application of a no surface occupancy (NSO) stipulation and requiring mitigation to achieve a net conservation gain. EA, p. 32. However, BLM did not comply with the requirements in the ROD and the Utah Approved RMP Amendment regarding prioritization of leasing and development outside sage-grouse habitat, or the related implementation guidance.

The Greater Sage Grouse EIS ROD referenced in the EIS includes a "Prioritization Objective" which provides:

In addition to allocations that limit disturbance in PHMAs and GHMAs, the ARMPAs prioritize oil and gas leasing and development outside of identified PHMAs and GHMAs to further limit future surface disturbance and to encourage new development in areas that would not conflict with GRSG. This objective is intended to guide development to lower conflict areas and, as such, protect important habitat and reduce the time and cost associated with oil and gas leasing development. It would do this by avoiding sensitive areas, reducing the complexity of environmental review and analysis of potential impacts on sensitive species, and decreasing the need for compensatory mitigation.

ROD, p. 1-23. The Utah Approved RMP Amendment echoes this directive, including the following objective:

Priority will be given to leasing and development of fluid mineral resources, including geothermal, outside of PHMA and GHMA. When analyzing leasing and authorizing development of fluid mineral resources, including geothermal, in PHMA and GHMA, and subject to applicable stipulations for the conservation of GRSG, priority will be given to development in non-habitat areas first and then in the least suitable habitat for GRSG. The implementation of these priorities will be subject to valid existing rights and any applicable law or regulation, including, but not limited to, 30 USC 226(p) and 43 CFR, Part 3162.3-1(h).

Utah Approved RMP Amendment, p. 2-25.

Further, BLM has issued guidance elaborating on the way agency staff are to comply with the requirement to prioritize leasing and development outside sage-grouse habitat in Instruction Memorandum (IM) 2016-143 Implementation of Greater Sage-Grouse Resource Management Plan Revisions or Amendments – Oil & Gas Leasing and Development Sequential Prioritization¹. IM 2016-143 provides the following, in making leasing decisions:

Lands within PHMAs: BLM state offices will consider EOIs for lands within PHMAs after lands outside of GHMAs and PHMAs have been considered, and EOIs for lands within GHMA have been considered. When considering the PHMA lands for leasing, the BLM State Offices will ensure that a decision to lease those lands would conform to the conservation objectives and provisions in the GRSG Plans (e.g., Stipulations) including special consideration of any identified SFAs.

The IM also sets out “factors to consider” after applying this prioritization sequence:

- Parcels immediately adjacent or proximate to existing oil and gas leases and development operations or other land use development should be more appropriate for consideration before parcels that are not near existing operations. This is the most important factor to consider, as the objective is to minimize disturbance footprints and preserve the integrity of habitat for conservation.
- Parcels that are within existing Federal oil and gas units should be more appropriate for consideration than parcels not within existing Federal oil and gas units.
- Parcels in areas with higher potential for development (for example, considering the oil and gas potential maps developed by the BLM for the GRSG Plans) are more appropriate for consideration than parcels with lower potential for development. The Authorized Officer may conclude that an area has “higher potential” based on all pertinent information, and is not limited to the Reasonable Foreseeable Development (RFD) potential maps from Plans analysis.
- Parcels in areas of lower-value sage-grouse habitat or further away from important life-history habitat features (for example, distance from any active sage-grouse leks) are more

¹ Available at:

https://www.blm.gov/wo/st/en/info/regulations/Instruction_Memos_and_Bulletins/national_instruction/2016/IM_2016-143.html

appropriate for consideration than parcels in higher-value habitat or closer to important life-history habitat features (i.e. lek, nesting, winter range areas). At the time the leasing priority is determined, when leasing within GHMA or PHMA is considered, BLM should consider, first, areas determined to be non-sage-grouse habitat and then consider areas of lower value habitat.

- Parcels within areas having completed field-development Environmental Impact Statements or Master Leasing Plans that allow for adequate site-specific mitigation and are in conformance with the objectives and provisions in the GRSG Plans may be more appropriate for consideration than parcels that have not been evaluated by the BLM in this manner.
- Parcels within areas where law or regulation indicates that offering the lands for leasing is in the government's interest (such as in instances where there is drainage of Federal minerals, 43 CFR § 3162.2-2, or trespass drilling on unleased lands) will generally be considered more appropriate for leasing, but lease terms will include all appropriate conservation objectives and provisions from the GRSG Plans.
- As appropriate, use the BLM's Surface Disturbance Analysis and Reclamation Tracking Tool (SDARTT) to check EOI parcels in PHMA, to ensure that existing surface disturbance does not exceed the disturbance and density caps and that development of valid existing rights (Solid Minerals, ROW) for approved-but-not-yet-constructed surface disturbing activities would not exceed the caps.

In the draft EA for this sale, BLM failed to reference, let alone address, the prioritization objectives in the Greater Sage Grouse EIS ROD, the Utah Approved RMP Amendment or IM 2016-143. The proposed action recommended offering for sale all 20 nominated parcels ("EOIs"), including each of the 11 nominations within PHMA. In comments on the draft EA, we asked that BLM incorporate IM 2016-143 and apply its prioritization sequence and parcel-specific factors.

In response, in the final EA, BLM added references to IM 2016-143 and described habitat features and oil and gas development near the PHMA Parcels, but carried forward all 11 of the PHMA Parcels. As to nearby development, "the most important factor to consider," the EA provides that "[t]here is no existing oil and gas development in the Project Area." EA, p. 21. As to the quality of the sage-grouse habitat, the EA provides that "[t]here are 5 occupied leks within 4-miles of the lease parcels." EA, p. 21. The EA also shows nesting and brood-rearing habitat within parcels 020 and 021 as well as winter habitat within parcels 018 and 025. *Id.* The EA does not consider other parcel-specific factors, such as the oil and gas development potential of the lands covered by the PHMA Parcels. Nor does the BLM describe how the weight of the parcel-specific factors influenced its decision to offer the PHMA Parcels.

In other recent lease sale EAs analyzing nominations in PHMA, BLM applied the prioritization sequence and discussed how the parcel-specific factors informed its proposed action and leasing decision. In the draft EA prepared for the August 2017 sale in Wyoming, for example, BLM applied the parcel-specific factors to justify a deferral decision:

After careful review of the parcels, the BLM has determined that it was appropriate to defer certain parcels nominated for inclusion in the August 2017 oil and gas lease sale... These deferrals were made consistent with the BLM's sage-grouse conservation plans and strategy, which direct the BLM to prioritize oil and gas leasing and development in a manner that minimizes resource conflicts in order to protect important habitat and reduce development time and costs. Parcels deferred are generally located in sage-grouse important life-history habitat features such as active or occupied leks, and/or are not proximate to adjacent to existing development, and are in areas of low oil and gas development potential.

EA at p. 1-2, 1-3. In that same sale, BLM also applied the parcel-specific factors to justify a decision to carry forward parcels for leasing:

Parcels WY-1708-153 and WY-1708-154 are proximate or adjacent to federal oil and gas leases with active development and production (within 2 miles of leases currently held by production), and have no known sage-grouse leks within the boundaries. The area is also proximate to bentonite mining claims, disturbance, and activity."

See EA at p. 3-38. Thus, in the Wyoming sale, BLM proposed deferring parcels on lands with high-quality sage-grouse habitat, low potential for successful oil and gas development, and minimal nearby oil and gas development, and proposed carrying forward parcels on lands with lower-quality sage-grouse habitat that were near existing oil and gas development and disturbing activities. BLM described how the parcel-specific factors in IM 2016-143 led the agency to identify parcels appropriate and inappropriate for new leasing.

As another example, in the final EA for the June 2017 sale in Colorado, BLM devoted several pages to analyzing and explaining how the prioritization sequence and parcel-specific factors applied to its decision to lease 22 parcels that had only "minor overlap" with priority sage-grouse habitat. EA, pp. 103 – 106. In applying the prioritization sequence, BLM configured the proposed leases to avoid both GHMA and PHMA, leaving parcels with only "diminutive slivers of habitat on the periphery of mapped GHMA and PHMA." EA, p. 103. BLM made a "conscious effort... avoid inclusion of mapped sage-grouse habitats." EA, p. 103. Further, even though the re-configured parcels had minimal overlap with sage-grouse habitat, BLM devoted several pages of analysis to the parcel-specific factors from IM 2016-143 by exploring the vicinity of the parcels to proximate oil and gas development, the quality of the sage-grouse habitat, and the oil and gas development potential in the area of the parcels. IM 2016-143 ("BLM State Offices will use the following prioritization sequence for considering leasing in *or near* GRS habitat, while also considering the 'Factors to Consider While Evaluating EOIs in Each Category' as described on the following page.") (emphasis added). BLM prioritized leasing outside of PHMA and GHMA and applied the parcel-specific factors described in IM 2016-143.

In this sale, BLM failed to explain how the prioritization sequence or parcel-specific factors led to its leasing decision. As described in § 3.3.6, the PHMA parcels contain important life-history habitat features, including leks, nesting and brood-rearing habitat and winter habitat, that would weigh against offering the leases for sale. EA, p. 21 ("There are 5 occupied leks within 4-miles

of the lease parcels..."). There is no existing oil and gas development near the PHMA Parcels, and (though not described in the EA) there is low potential for successful future oil and gas development around the PHMA Parcels. EA, p. 21 ("There is no existing oil and gas development in the Project Area..."); 2005 Richfield Field Office Reasonably Foreseeable Development Scenario, Figure 5 ("Oil and Gas Development Potential"). The PHMA Parcels are not within a unitized area, an area covered by a field-development EIS or a Master Leasing Plan. BLM is not offering the PHMA Parcels to address drainage on neighboring lands. In sum, each of the parcel-specific factors appear to weigh against a decision to lease the PHMA Parcels, and, in other sales described above, did in fact lead BLM to prioritize new leasing outside of priority sage-grouse habitat, in accordance with the Greater Sage Grouse EIS ROD, the Utah Approved RMP Amendment or IM 2016-143.

We hope to see BLM fully comply with the applicable land use plans and guidance prior to proceeding with leasing the protested parcels.

Sincerely,

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